

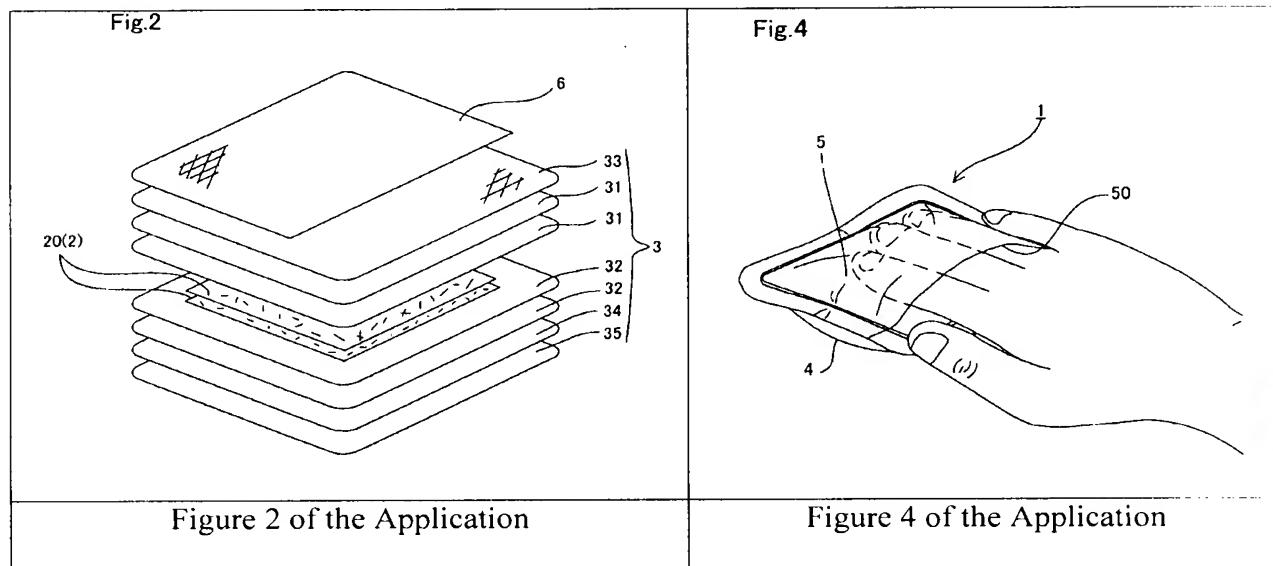
REMARKS/ARGUMENTS

Favorable reconsideration of this application as currently amended and in view of the following remarks is respectfully requested.

Claims 1-5, 7-10, 12-16, 18, and 19 are currently active in this case. Claims 2 and 12 have been amended, and Claim 19 has been added by the current amendment. No new matter has been added.

In the outstanding Office Action, Claims 1, 2, 4, 5, 7-10, and 12-18 were rejected under 35 U.S.C. § 103(a) as unpatentable over Japanese Patent Application Publication No. 01-201253 to Yahara et al. in view of USP 5,084,986 to Usui.

Briefly recapitulating, the present invention (Claim 1) is directed to a warming article including a heat generating main body and a receiving part configured to receive a part of a human body. The heat generating main body includes a heat generating element configured to generate water vapor, and an air permeable holder configured to hold the heat generating element. The holder includes an air impermeable layer and an air permeable layer. The heat generating main body is expandable by water vapor generated with heat generation of the heat generating element, the air permeable layer and the air impermeable layer are provided on opposite sides of the heat generating element, and the receiving part is provided on the side of the air permeable layer. By way of non-limiting example, Figure 2 illustrates that the warming article includes an air permeable holder including air permeable sheet 31 and an air impermeable sheet 32. The heating element 20(2) is provided between sheets 31 and 32. A receiving part member 6 forms part of an insertion opening 50. See page 20, lines 19-21 of the Specification. See also Figure 4 which illustrates a hand inserted in the in the insertion opening 50.

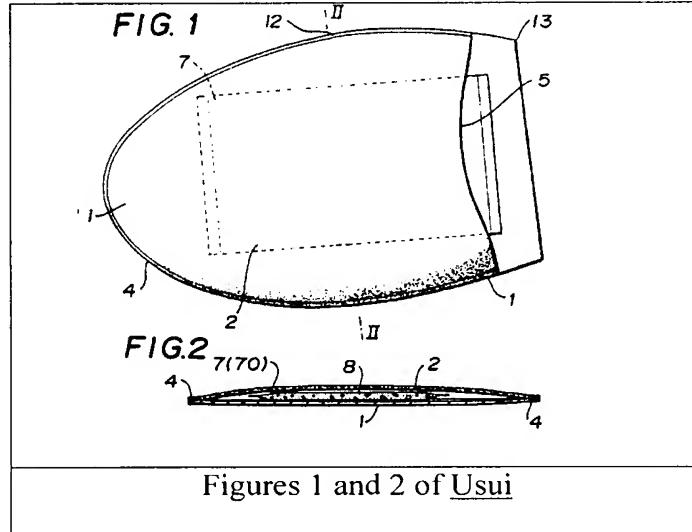


As a consequence of this configuration, the warming article provides a moisturizing function in the receiving part as well as a heating function. When the warming article is combined with any functional agent, the claimed configuration enhances penetration of the functional agent. See the Specification, page 17, lines 1-9.

Similar to Claim 1, Claim 7 defines a warming article wherein the heat generating element of the heat generating main body generates 1 to 100 mg per ( $\text{cm}^2 \times 10 \text{ min}$ ) of water vapor. Claim 12 is directed to the heat generating article and provides that a molded sheet includes an oxidizable metal, a moisture retaining agent, and a fibrous material and has a maximum stress of 0.3 to 5 MPa and a breaking elongation of 2 to 10%. The molded sheet is disposed between an air permeable sheet and an air impermeable sheet and three-dimensionally shaped together with the air permeable sheet and the air impermeable sheet.

As acknowledged in the office action, Yahara et al. fail to teach a receiving part configured to receive a part of the body which is provided on the air permeable side of the holder. Applicants agree. However, the official action further asserts that Usui remedies the deficiencies of Yahara et al. Applicants respectfully traverse.

Usui discloses a disposable warmer holder having an inlet-outlet 5 for holding the disposable warmer 7. In contrast to the subject matter defined by Applicants' claims 1 and 7, Usui does not include a receiving part configured to receive a part of a body.



For the foregoing reasons, Yahara et al. are not believed to anticipate or render obvious the subject matter defined by Claims 1 and 7 when considered alone or in combination with Usui.

Claims 2 and 19 further defined that the air permeable layer is provided between the receiving part and the air impermeable layer.<sup>1</sup> In contrast Usui teaches that the receiving part for the heating element is provided between the layers having different permeabilities. Thus, Yahara et al. are not believed to anticipate or render obvious the subject matter defined by Claims 2 and 19 when considered alone or in combination with Usui.

Regarding Claim 12, the official action asserts that "the burden rests on applicant to provide if proof the molded sheet of Yahara does not have these properties and the claimed properties render the claimed invention patentably distinct from that taught by Yahara." Applicants respectfully traverse. Applicants are only required to distinguish its invention from the apparatus disclosed by Yahara et al. Whether Yahara et al. even actually

<sup>1</sup> The objection to claim 2 is rendered moot by the current amendment.

produced/manufactured the subject apparatus is unknown and irrelevant to the current inquiry.

The official action further asserts that it would have been obvious as a matter of design choice to modify the molded sheet of Yahara et al. to have the claimed properties of claims 12. Applicants respectfully traverse. *In re Antonie*, 559 F.2d 618, 195 USPQ 6 (CCPA 1977) holds that the cited reference[s] must recognize a particular parameter as a result-effective variable before concluding that discovering an optimum value of the variable involved only routine skill in the art. Neither Yahara et al. nor Usui recognize a maximum stress or a breaking elongation as being result-effective. Hence, the obviousness rejection applying Yahara et al. and Usui should be withdrawn.

Consequently, Yahara et al. are not believed to anticipate or render obvious the subject matter defined by Claim 12 when considered alone or in combination with Usui.

In view of the foregoing, no further issues are believed to be remaining. An early and favorable action is therefore respectfully requested.

Respectfully submitted,

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(OSMMN 08/07)